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23 IN THE UNITED STATES DISTRICT COURT  
24 CENTRAL DISTRICT OF CALIFORNIA  
25 WESTERN DIVISION

26 UNITED STATES OF AMERICA  
27 and THE STATE OF CALIFORNIA

28 Plaintiffs,

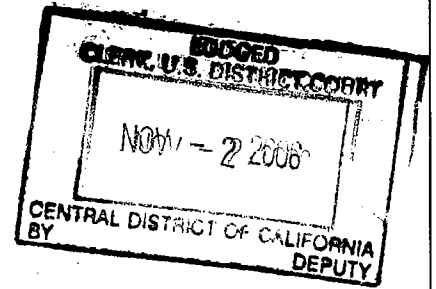
v.

RATHON CORP.

Defendant.

CASE NO.

CONSENT DECREE



06 7248 GPS (RZ)

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## I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of California ("State"), on behalf of the Department of Toxic Substances Control ("DTSC"), have filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, seeking performance of response actions and reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Puente Valley Operable Unit ("PVOU") of the San Gabriel Valley Superfund Site, Area 4, Los Angeles County, California (the "Site").

B. This Consent Decree provides for the reimbursement of a portion of the United States' Past Response Costs and a portion of the State DTSC's Past Response Costs at this Site by Rathon Corp. and Chemed Corporation. ("Settling Defendants").

C. By entering into this Consent Decree, Settling Defendants do not admit liability to or arising out of the transactions or occurrences alleged in the Complaint or to any other person related to the Site.

D. The United States, the State DTSC, and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is  
ORDERED, ADJUDGED, AND DECREED:

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1 § 9601, et seq.

2 d. "Consent Decree" shall mean this Consent Decree and  
3 Appendix A attached hereto.

4 e. "Day" shall mean a calendar day. In computing any period of  
5 time under this Consent Decree, where the last day falls on a Saturday, Sunday, or  
6 federal holiday, the period shall run until the close of business of the next working  
7 day.

8 f. "DOJ" shall mean the United States Department of Justice and  
9 any successor departments, agencies, or instrumentalities of the United States.

10 g. "DTSC" shall mean the State of California Department of  
11 Toxic Substances Control and any successor departments or agencies.

12 h. "Effective Date" shall mean the date of entry of this Consent  
13 Decree.

14 i. "EPA" shall mean the United States Environmental Protection  
15 Agency and any successor departments, agencies, or instrumentalities of the  
16 United States.

17 j. "EPA Hazardous Substance Superfund" shall mean the  
18 Hazardous Substance Superfund established by the Internal Revenue Code,  
19 26 U.S.C. § 9507.

20 k. "ESD" shall mean the Explanation of Significant Differences  
21 issued by EPA on June 14, 2005 for the Record of Decision.

22 l. "Facility" shall mean the Site.

23 m. "Future DTSC Response Costs" shall mean all costs, including  
24 but not limited to Oversight Costs, direct and indirect costs, and Basin-wide  
25 Response Costs allocated to the Site, including Interest, that the State DTSC pays  
26 or incurs for the Response Work at the Site after the date of entry of this Consent  
27 Decree, but prior to the later of (i) the date 8 years from the Operational and  
28 Functional Date of the Carrier Consent Decree, or (ii) the date of issuance of a

1 final Record of Decision for the Site.

2 n. "Future Response Costs" shall mean all costs, including but not  
3 limited to Oversight Costs, direct and indirect costs, and Basin-wide Response  
4 Costs allocated to the Site, including Interest, that the United States or any third  
5 party pays or incurs for the Response Work at the Site after the date of entry of  
6 this Consent Decree, but prior to the later of (i) the date 8 years from the  
7 Operational and Functional Date of the Carrier Consent Decree, or (ii) the date of  
8 issuance of a final Record of Decision for the Site.

9 o. "Interest" shall mean interest at the applicable rate specified for  
10 interest on investments of the Hazardous Substance Superfund established by  
11 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance  
12 with 42 U.S.C. § 9607(a).

13 p. "Oversight Costs" shall mean all direct and indirect costs,  
14 including Interest, that the United States or the DTSC incurs in connection with  
15 monitoring and supervising performance of the Response Work by other persons.

16 q. "Paragraph" shall mean a portion of this Consent Decree  
17 identified by an arabic numeral or an upper or lower case letter.

18 r. "Parties" shall mean the United States, the State DTSC, and the  
19 Settling Defendants.

20 s. "Past DTSC Response Costs" shall mean all costs, including  
21 but not limited to Oversight Costs, direct and indirect costs, and Basin-wide  
22 Response Costs allocated to the Site, including Interest, that the State DTSC has  
23 paid or incurred at or relating to the Site through and including the date of entry of  
24 this Consent Decree.

25 t. "Past Response Costs" shall mean all costs, including but not  
26 limited to Oversight Costs, direct and indirect costs, and Basin-wide Response  
27 Costs allocated to the Site, including Interest, that the United States or any third  
28 party has paid or incurred at or relating to the Site through and including the date

1 of entry of this Consent Decree.

2 u. "Plaintiffs" shall mean the United States and the State of  
3 California Department of Toxic Substances Control.

4 v. "Record of Decision" or "ROD" shall mean the September 30,  
5 1998 EPA Interim Record of Decision for the Puente Valley Operable Unit (Area  
6 4) of the San Gabriel Valley Superfund Sites, Areas 1-4.

7 w. "Response Work" shall mean the design and implementation of  
8 any remedial measures, including the operation and maintenance thereof,  
9 encompassed within the Record of Decision as modified by the ESD.

10 x. "Section" shall mean a portion of this Consent Decree  
11 identified by a Roman numeral.

12 y. "Settling Defendants" shall mean Rathon Corp. and Chemed  
13 Corporation, their respective predecessors in interest, and their respective  
14 corporate beneficiaries, heirs, successor(s), and assigns but only to the extent that  
15 such predecessors in interest, corporate beneficiaries, heirs, successor(s), and  
16 assigns have no independent liability for the Site other than liability derived from  
17 that entity's relationship to or affiliation with the Settling Defendants.

18 z. "Site" shall mean the facility, which consists of an area of  
19 groundwater contamination in Los Angeles County, California, located in the  
20 geographic area designated on the National Priorities List as the San Gabriel  
21 Valley Superfund Site, Area 4 [see 49 Fed. Reg. 19480 (1984)], and identified as  
22 the Puente Valley Operable Unit.

23 aa. "State" shall mean the State of California.

24 bb. "United States" shall mean the United States of America,  
25 including its departments, agencies and instrumentalities.

## 26 V. REIMBURSEMENT OF RESPONSE COSTS

27 4. Payments to the EPA Hazardous Substance Superfund and to the  
28 State DTSC. Settling Defendants shall pay to the EPA Hazardous Substance



1 Superfund the amount of one million seven hundred-sixty thousand dollars  
2 (\$1,760,000) in reimbursement of Past Response Costs and pay to the State DTSC  
3 fourteen thousand dollars (\$14,000) in reimbursement of Past DTSC Response  
4 Costs. Payment shall be made as follows:

5 a. Settling Defendants shall, within fifteen (15) working Days after  
6 entry of this Consent Decree, remit the principal of one million seven hundred-  
7 sixty thousand dollars (\$1,760,000) to the United States. Payment to the United  
8 States shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S.  
9 Department of Justice in accordance with current EFT procedures, referencing the  
10 USAO File Number, EPA Region IX, the Site/Spill ID Number 09-8V, and DOJ  
11 Case Number 90-11-2-354/24. Payment shall be made in accordance with  
12 instructions provided to the Settling Defendants by the Financial Litigation Unit of  
13 the United States Attorney's Office for the Central District of California following  
14 lodging of the Consent Decree. Any payments received by the Department of  
15 Justice after 4:00 p.m. Eastern Time shall be credited on the next business Day.  
16 Settling Defendants shall send notice to the EPA and the DOJ that payment has  
17 been made in accordance with Section XIII (Notices and Submissions) and to  
18 David Wood, PMD-6, Section Chief, U.S. EPA, Region IX, 75 Hawthorne Street,  
19 San Francisco, California 94105.

20 b. The one million seven hundred-sixty thousand dollars (\$1,760,000)  
21 paid by Settling Defendants to the United States shall be deposited in the "San  
22 Gabriel Valley Superfund Sites, Area 4, Special Account" within the EPA  
23 Hazardous Substance Superfund. This Special Account shall be retained and used  
24 to conduct or finance response actions at or in connection with the Site or the San  
25 Gabriel Valley Superfund Sites (Areas 1- 4), or may be transferred by the EPA  
26 from this Special Account to the EPA Hazardous Substance Superfund.

27 c. Settling Defendants shall, within fifteen (15) working Days after  
28 entry of this Consent Decree, remit the principal of fourteen thousand dollars

1 (\$14,000) to the State DTSC. Payment to the State DTSC shall be made by  
2 certified check or cashier's check, made payable to "Cashier of the Department of  
3 Toxic Substances Control," Department of Toxic Substances Control, State of  
4 California, Accounting Office, 1001 I Street, Sacramento, California 96814.  
5 Settling Defendants shall send a transmittal letter with the check, referencing the  
6 San Gabriel Superfund Sites, Area 4 (Puente Valley Operable Unit), Project Code  
7 No. 300346. Settling Defendants also shall send notice, including a copy of the  
8 check and transmittal letter, to the State DTSC as provided in Section XIII  
9 (Notices and Submissions).

## 10 VI. FAILURE TO COMPLY WITH REQUIREMENTS

11 5. Interest on Late Payments. In the event that any payment required  
12 under Section V (Reimbursement of Response Costs) or Section VI, Paragraph 6  
13 (Stipulated Penalties) is not received when due, Interest shall continue to accrue  
14 on the unpaid balance through the date of payment. Settling Defendants shall be  
15 liable for any such Interest pertaining to the payments required under Section V,  
16 paragraphs 4. a. and c. (Reimbursement of Response Costs).

### 17 6. Stipulated Penalties.

18 a. Settling Defendants shall be liable for stipulated penalties for  
19 late payments under Section V, paragraphs 4. a. and c. (Reimbursement of  
20 Response Costs) and for the Interest on late payments for Section V, paragraphs 4.  
21 a. and c. as required under Section VI, Paragraph 5. The stipulated penalties shall  
22 be in the following amounts per violation per Day that any such payment is late:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1500	15th through 30th Day
\$2500	31st Day and beyond

27 Each of the payments required under Section V (Reimbursement of Response  
28 Costs) shall be considered a separate violation for purposes of calculating

1 stipulated penalties under this provision.

2           b. Each Settling Defendant shall be liable for stipulated penalties  
3 in the amount of \$1500 per Day per violation by that Settling Defendant of the  
4 provisions contained in Sections XI (Access To Information), and XII (Retention  
5 of Records).

6           7. All Interest and penalties set forth under this Section shall begin to  
7 accrue on the Day a violation occurs, and shall continue to accrue through the final  
8 Day of the correction of the noncompliance. Nothing herein shall prevent the  
9 simultaneous accrual of separate penalties for separate violations of this Consent  
10 Decree.

11           8. Interest and stipulated penalties shall accrue as provided in  
12 Paragraphs 5 and 6, regardless of whether EPA or DTSC has notified Settling  
13 Defendants of the violation or made a demand for payment, but need be paid only  
14 upon demand.

15           9. Interest and stipulated penalties set forth under this Section shall be  
16 due and payable within 30 Days of the date of demand for payment. All payments  
17 to the United States under this Paragraph shall be made by certified or cashier's  
18 check made payable to the "EPA Hazardous Substances Superfund," shall be  
19 forwarded to the U.S. EPA, Region IX, Superfund Accounting, P.O. Box  
20 360863M, Pittsburgh, PA 15251, shall indicate that payment is for Interest and/or  
21 stipulated penalties, and shall reference EPA Region IX, the Site/Spill  
22 Identification Numbers 09-8V, the USAO File Number, the DOJ Case Number 90-  
23 11-2-354/24, and the name and address of the party making payment. Copies of  
24 check(s) paid pursuant to this Paragraph, and any accompanying transmittal  
25 letter(s), shall be forwarded to the DOJ and the EPA as provided in Section XIII  
26 (Notices and Submissions), and to David Wood, PMD-6, Section Chief, U.S. EPA  
27 Region IX, 75 Hawthorne Street, San Francisco, California 94105. Payment to the  
28 State DTSC under this Paragraph shall be made by certified check or cashier's

1 check, made payable to "Cashier of the Department of Toxic Substances Control,"  
2 and shall be forwarded to the Department of Toxic Substances Control, State of  
3 California, Accounting Office, 1001 I Street, Sacramento, California 96814.

4 Settling Defendants shall send a transmittal letter with the check, referencing the  
5 San Gabriel Superfund Sites, Area 4 (Puente Valley Operable Unit), Project Code  
6 No. 300346. Settling Defendants also shall send notice, including a copy of the  
7 check and transmittal letter, to the State DTSC as provided in Section XIII  
8 (Notices and Submissions).

9 10. Notwithstanding any other provision of this Section, the United States  
10 and/or the State DTSC may, in its unreviewable discretion, waive any portion of  
11 Interest or stipulated penalties that have accrued pursuant to this Consent Decree.

12 11. Payments made under Paragraphs 5 through 9 shall be in addition to  
13 any other remedies or sanctions available to Plaintiffs by virtue of Settling  
14 Defendants' failure to comply with the requirements of this Consent Decree.

15 12. In addition to the Interest and Stipulated Penalty payments required  
16 by this Section and any other remedies or sanctions available to the United States  
17 by virtue of a Settling Defendant's failure to comply with the requirements of this  
18 Consent Decree, if the United States and/or the State DTSC brings an action  
19 against any Settling Defendants to enforce this Consent Decree, and the claims  
20 made by the United States and/or the State DTSC are not arbitrary and capricious,  
21 Settling Defendants shall reimburse the United States and/or the State DTSC for  
22 all costs of such action, including but not limited to costs of attorney time.

## 23 **VII. COVENANT NOT TO SUE BY PLAINTIFFS**

24 13. Covenant Not to Sue. Except as specifically provided in Paragraph  
25 14 (Reservation of Rights), Plaintiffs covenant not to sue or to take  
26 administrative action against Settling Defendants for performance of Response  
27 Work, Past Response Costs, Future Response Costs, Past DTSC Response Costs,  
28 and Future DTSC Response Costs ("Matters Addressed"), pursuant to Section

1 7003 of RCRA, 42 U.S.C. § 6973, or Sections 106 and 107(a) of CERCLA, 42  
2 U.S.C. §§ 9606 and 9607(a). This covenant shall take effect upon receipt by  
3 Plaintiffs of the payments set forth in Paragraph 4. This covenant is conditioned  
4 upon Settling Defendants' satisfactory performance of their obligations under this  
5 Consent Decree. This covenant extends only to Settling Defendants and does not  
6 extend to any other person.

7 14. Reservation of Rights. The covenant not to sue set forth in Paragraph  
8 13 does not pertain to any matters other than the Matters Addressed. The  
9 Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights  
10 against Settling Defendants with respect to other matters, including but not limited  
11 to:

- 12 a. liability for failure by Settling Defendants to meet a  
13 requirement of this Consent Decree;
- 14 b. liability for damages for injury to, destruction of, or loss of  
15 natural resources, and for the costs of any natural resource damage assessments;
- 16 c. criminal liability; and
- 17 d. liability for response actions and response costs incurred or to  
18 be incurred by the United States not covered as Matters Addressed as set forth in  
19 Paragraph 13 of this Consent Decree, including but not limited to liability for  
20 response actions and response costs for any EPA Final Record of Decision issued  
21 pertaining to this Site.

#### 22 **VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

23 15. Settling Defendants covenant not to sue and agrees not to assert any  
24 claims or causes of action against Plaintiffs or their contractors or employees with  
25 respect to the Matters Addressed, as set forth in this Consent Decree, including  
26 but not limited to:

- 27 a. any direct or indirect claims for reimbursement from the  
28 Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or

1 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any  
2 other provision of law;

3 b. any claims arising out of costs or response actions at or in  
4 connection with the Site, including any claim under the United States Constitution,  
5 the California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to  
6 Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

7 c. any claims against the United States pursuant to Sections 107  
8 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, related to the Site.

9 16. Nothing in this Consent Decree shall be deemed to constitute  
10 approval or preauthorization of a claim within the meaning of Section 111 of  
11 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

12 **IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

13 17. Nothing in this Consent Decree shall be construed to create any rights  
14 in, or grant any cause of action to, any person not a Party to this Consent Decree.  
15 Each of the Parties expressly reserves any and all rights (including, but not limited  
16 to, any right to contribution), defenses, claims, demands, and causes of action  
17 which each Party may have with respect to any matter, transaction, or occurrence  
18 relating in any way to the Site against any person not a Party hereto.

19 18. The Parties agree that in consideration of the payment made by  
20 Settling Defendants and the execution of this Consent Decree, Settling Defendants  
21 have resolved their liability to Plaintiffs and are entitled to protection from  
22 contribution actions or claims as provided by Section 113(f)(2) of CERCLA,  
23 42 U.S.C. § 9613(f)(2), for Matters Addressed in this Consent Decree, conditioned  
24 only upon entry of this Consent Decree. The Matters Addressed in this Consent  
25 Decree are listed in Paragraph 13 above. The Matters Addressed exclude those  
26 response actions and response costs to which Plaintiffs have reserved their rights  
27 under this Consent Decree.

28 19. Settling Defendants agree that, with respect to any suit or claim for

contribution brought by them for matters related to this Consent Decree, they will notify the DOJ, the EPA, and the State DTSC in writing not later than sixty (60) Days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify the DOJ, EPA, and the State DTSC in writing within ten (10) Days of service of the complaint or claims upon them. In addition, Settling Defendants shall notify the DOJ, EPA, and the State DTSC within ten (10) Days of service or receipt of any motion for summary judgment or any order from a court setting a case for trial, for matters related to this Consent Decree.

20. In any subsequent administrative or judicial proceeding initiated by the United States or the State of California for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claims based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State of California in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiffs set forth in Section VII.

## X. SITE ACCESS

21. Commencing upon the date of lodging of this Consent Decree, Settling Defendants agree to provide the United States and the State of California and their representatives, including the EPA, the DTSC, and the Los Angeles Regional Water Quality Control Board, and their contractors, access at all reasonable times to the property within the Site owned or controlled by Settling Defendants to which access is determined by the EPA or the State of California to be required for the implementation of this Consent Decree, or for the purpose of

1 conducting any response activity related to the Site, including but not limited to:

2 a. Monitoring of investigation, removal, remedial or other  
3 activities at the Site;

4 b. Verifying any data or information submitted to the United  
5 States or to the State of California;

6 c. Conducting investigations relating to contamination at or near  
7 the Site;

8 d. Obtaining samples;

9 e. Assessing the need for, planning, or implementing response  
10 actions at or near the Site; and

11 f. Inspecting and copying records, operating logs, contracts, or  
12 other documents maintained or generated by Settling Defendants or their agents,  
13 consistent with Section XI (Access to Information).

14 22. Notwithstanding any provision of this Consent Decree, the United  
15 States and the State of California retain all of their access authorities and rights,  
16 including enforcement authorities related thereto, under CERCLA, the Resource  
17 Conservation and Recovery Act, 42 U.S.C. § 6927, and any other applicable  
18 statutes or regulations.

## 19 **XI. ACCESS TO INFORMATION**

20 23. Settling Defendants shall provide to Plaintiffs, upon request, copies of  
21 all documents and information within their possession or control or that of their  
22 contractors or agents relating in any manner to response actions taken at the Site  
23 or the liability of any person for response actions conducted and to be conducted  
24 at the Site, including, but not limited to, sampling, analysis, chain of custody  
25 records, manifests, trucking logs, receipts, reports, sample traffic routing,  
26 correspondence, or other documents or information related to the Site.

### 27 **24. Confidential Business Information and Privileged Documents.**

28 a. Settling Defendants may assert business confidentiality claims



1 covering part or all of the documents or information submitted to Plaintiffs under  
2 this Consent Decree to the extent permitted by and in accordance with Section  
3 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).

4 Documents or information determined to be confidential by Plaintiffs will be  
5 accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of  
6 confidentiality accompanies documents or information when they are submitted to  
7 the Plaintiffs, or if Plaintiffs have notified Settling Defendants that the documents  
8 or information are not confidential under the standards of Section 104(e)(7) of  
9 CERCLA, the public may be given access to such documents or information  
10 without further notice to Settling Defendants.

11           b.     Settling Defendants may assert that certain documents, records  
12 or other information are privileged under the attorney-client privilege or any other  
13 privilege recognized by federal law. If Settling Defendants assert such a privilege  
14 in lieu of providing documents, they shall provide Plaintiffs with the following:  
15 1) the title of the document, record, or information; 2) the date of the document,  
16 record, or information; 3) the name and title of the author of the document, record,  
17 or information; 4) the name and title of each addressee and recipient; 5) a  
18 description of the subject of the document, record or information; and 6) the  
19 privilege asserted. However, no documents, reports, or other information created  
20 or generated pursuant to the requirements of this or any other consent decree with  
21 Plaintiffs shall be withheld on the grounds that they are privileged. If a claim of  
22 privilege applies only to a portion of a document, the document shall be provided  
23 to Plaintiffs in redacted form to mask the privileged information only. Settling  
24 Defendants shall retain all records and documents that they claim to be privileged  
25 until Plaintiffs have had a reasonable opportunity to dispute the privilege claim  
26 and any such dispute has been resolved in the Settling Defendants' favor.

27           25.   No claim of confidentiality shall be made with respect to any data,  
28 including but not limited to, all sampling, analytical, monitoring, hydrogeologic,

1 scientific, chemical, or engineering data, or any other documents or information  
2 evidencing conditions at or around the Site.

## 3 **XII. RETENTION OF RECORDS**

4 26. Until ten (10) years after the entry of this Consent Decree, Settling  
5 Defendants shall preserve and retain all records and documents now in their  
6 possession or control, or which come into their possession or control thereafter,  
7 that relate in any manner to response actions taken at the Site or the liability of any  
8 person for response actions conducted and to be conducted at the Site, regardless  
9 of any corporate retention policy to the contrary. After five (5) years, Settling  
10 Defendants may contact the EPA in writing to request instructions as to whether  
11 such records and documents shall be maintained for the remaining five (5) year  
12 retention period, or whether such records and documents may be discarded. No  
13 retained records or documents shall be disposed of prior to the ten (10) year  
14 retention period, unless Settling Defendants receive instructions from the EPA  
15 specifically permitting Settling Defendants to dispose of such records and  
16 documents.

17 27. After the conclusion of the ten (10) year document retention period in  
18 the preceding Paragraph, Settling Defendants shall notify the EPA and the DOJ at  
19 least ninety (90) Days prior to the destruction of any such records or documents,  
20 and, upon request by the EPA or the DOJ, Settling Defendants shall deliver any  
21 such records or documents to EPA subject to the same privilege provisions set  
22 forth in Section XI (Access To Information).

23 28. By signing this Consent Decree, Settling Defendants certify  
24 individually that, after thorough inquiry, to the best of their knowledge and belief,  
25 they have not altered, mutilated, discarded, destroyed, or otherwise disposed of  
26 any records, documents, or other information relating to their respective potential  
27 liability regarding the Site, after notification of potential liability or the filing of a  
28 suit against Settling Defendants regarding the Site; and that they have fully

1 complied with any and all EPA requests for information regarding the Site  
2 pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and  
3 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

### 4 XIII. NOTICES AND SUBMISSIONS

5 29. Whenever, under the terms of this Consent Decree, notice is required  
6 to be given or a document is required to be forwarded by one party to another, it  
7 shall be directed to the individuals at the addresses specified below, unless those  
8 individuals or their successors give notice of a change to the other Parties in  
9 writing. Written notice as specified herein shall constitute complete satisfaction of  
10 any written notice requirement of the Consent Decree with respect to the United  
11 States (the DOJ and the EPA), the State of California DTSC, and Settling  
12 Defendants, respectively.

#### 13 14 As to the United States:

##### 15 As to DOJ:

16 Bruce S. Gelber  
17 Chief, Environmental Enforcement Section  
18 Environment and Natural Resources Division  
19 U.S. Department of Justice (DJ # 90-11-2-354/24)  
20 P.O. Box 7611  
21 Washington, D.C. 20044-7611

22 Matthew A. Fogelson  
23 Trial Attorney  
24 Environmental Enforcement Section  
25 Environment and Natural Resources Division  
26 U.S. Department of Justice  
27 301 Howard Street, Suite 1050  
28 San Francisco, CA 94105

##### As to EPA:

Dustin Minor (ORC-3)  
Senior Counsel  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

1 As to the State of California Department of Toxic Substances Control:

2 Ann Rushton  
3 Deputy Attorney General, Environment Section  
4 California Department of Justice  
300 South Spring Street, #5000  
Los Angeles, California 90013

5 Jacalyn Spizman  
6 Project Manager, Site Mitigation Branch  
7 Department of Toxic Substances Control, Region 3  
5796 Corporate Avenue  
Cypress, California 90630

8 As to Settling Defendants:

9 JAMES J. DRAGNA  
10 Bingham McCutchen, LLP  
355 S. Grand Ave. Suite 4400  
Los Angeles, CA 90071  
11 Telephone: (213)-680-6436  
12 Facsimile: (213)-680-6499  
e-mail: [jim.dragna@bingham.com](mailto:jim.dragna@bingham.com)

13 Attorney for Settling Defendant Rathon Corp.

14 J. WRAY BLATNER  
15 Thompson Hine LLP  
2000 Courthouse Plaza  
P.O. Box 8801  
16 Dayton, OH 45401-8801  
Telephone: (937)443-6539  
17 Facsimile: (937)443-6805  
[wray.blattner@thompsonhine.com](mailto:wray.blattner@thompsonhine.com)

18 Attorney for Settling Defendant Chemed Corporation  
19

20 Settling Defendants may change the identity or contact information for their  
21 agent at any time by written notice to the Court and to the United States.

22 **XIV. RETENTION OF JURISDICTION**

23 30. This Court shall retain jurisdiction over this matter for the purpose of  
24 interpreting and enforcing the terms of this Consent Decree.

25 **XV. INTEGRATION/APPENDICES**

26 31. This Consent Decree constitutes the final, complete and exclusive  
27 agreement and understanding among the Parties with respect to the settlement  
28 embodied in this Consent Decree. The Parties acknowledge that there are no

1 representations, agreements or understandings relating to the settlement other than  
2 those expressly contained in this Consent Decree.

3 **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

4 32. This Consent Decree shall be lodged with the Court for a period of  
5 not less than thirty (30) Days for public notice and comment. The United States  
6 reserves the right to withdraw or withhold its consent if the comments regarding  
7 the Consent Decree disclose facts or considerations which indicate that this  
8 Consent Decree is inappropriate, improper, or inadequate. Settling Defendants  
9 consent to the entry of this Consent Decree without further notice.

10 33. If for any reason this Court should decline to approve this Consent  
11 Decree in the form presented, this agreement is voidable at the sole discretion of  
12 any party and the terms of the agreement may not be used as evidence in any  
13 litigation between the Parties.

14 **XVII. EFFECTIVE DATE**

15 34. The effective date of this Consent Decree shall be the date upon  
16 which it is entered by the Court.

17 **XVIII. SIGNATORIES/SERVICE**

18 35. Each undersigned representative of the Settling Defendants, the  
19 Assistant Attorney General for the Environment and Natural Resources Division  
20 of the United States Department of Justice, and together for the State of California,  
21 the Deputy Attorney General and the Chief of Operations, Southern California  
22 Cleanup Operations Branch Cypress Office, certifies that he or she is authorized to  
23 enter into the terms and conditions of this Consent Decree and to execute and bind  
24 legally such Party to this document.

25 36. Settling Defendants hereby agree not to oppose entry of this Consent  
26 Decree by this Court or to challenge any provision of this Consent Decree, unless  
27 the United States has notified Settling Defendants in writing that it no longer  
28 supports entry of the Consent Decree.

37. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

## XIX. FINAL JUDGMENT

38. Upon approval and entry of this Consent Decree by this Court, this Consent Decree shall constitute a final judgment between and among the United States, the State of California DTSC, and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as the final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_

AUDREY B. COLLINS  
United States District Judge

1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to  
2 the San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente  
3 Valley Operable Unit.

4 FOR THE UNITED STATES OF AMERICA

5  
6  
7 Dated: 10-31-06

8 ~~SUE ELLEN WOOLDRIDGE~~ 7  
Assistant Attorney General  
9 Environment & Natural Resources Division  
United States Department of Justice

10  
11  
12  
13 Dated: 10-31-06

14 ~~MATTHEW A. FOGELSON~~ -  
ELIZABETH F. KROOP  
15 Trial Attorneys  
Environmental Enforcement Section  
16 Environment & Natural Resources Division  
United States Department of Justice  
17 301 Howard Street, Suite 1050  
San Francisco, CA 94105  
18 Telephone: (415) 744-6470  
Telecopier: (415) 744-6476  
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Dated: 9/29/06

KEN H TAKATA  
Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Dated: 9/29/06

DUSTIN MINOR  
Senior Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105



1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to  
2 the San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente  
3 Valley Operable Unit.

4  
5 FOR THE STATE OF CALIFORNIA  
6 DEPARTMENT OF TOXIC  
7 SUBSTANCES CONTROL

8 Dated: 10/11/06

9 THOMAS COTA  
10 Chief, Southern California  
11 Cleanup Operations Branch  
12 Cypress Office  
13 5796 Corporate Avenue  
14 Cypress, CA 90630

15  
16 Dated: 10-26-06

17 ANN RUSHTON  
18 Deputy Attorney General  
19 Environment Section  
20 California Department of Justice  
21 300 South Spring Street, #5000  
22 Los Angeles, California 90013  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to  
2 the San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente  
3 Valley Operable Unit.

4 FOR RATHON CORP.

5  
6 Dated: 9/27/06

7 NAME CYNTHIA L. GOLDMAN  
8 ADDRESS Vice President, Assist. Secretary  
9 Telephone: 17735 W. 32nd Ave., NH-335  
Telecopier: Golden, CO 80401-0030  
(303)277-3002; (303)277-7373

10 [name and address of agent authorized  
11 to receive service of process pursuant to  
paragraph 37]

12 THE CORPORATION TRUST COMPANY  
13 1209 Orange Street  
14 Wilmington, DE 19801  
15 (302)658-7581  
16  
17  
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28

1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to  
2 the San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente  
3 Valley Operable Unit.

4 FOR CHEMED CORPORATION

5  
6 Dated: 9/28/06

7 NAME Kevin McNamara, President & CEO  
8 ADDRESS 255 East Fifth Street  
9 Telephone: Suite 2600  
Telecopier: Cincinnati, Ohio 45202  
(513) 762-6900  
(513) 287-6216 fax

10 [name and address of agent authorized  
11 to receive service of process pursuant to  
12 paragraph 37]  
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Appendix A

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ORIGINAL

1 SUE ELLEN WOOLDRIDGE  
2 Assistant Attorney General  
3 Environment & Natural Resources Division  
4 United States Department of Justice

5 MATTHEW A. FOGELSON  
6 Environmental Enforcement Section  
7 Environment & Natural Resources Division  
8 United States Department of Justice  
9 301 Howard Street, Suite 1050  
10 San Francisco, CA 94105  
11 Telephone: (415) 744-6470  
12 Facsimile: (415) 744-6476  
13 E-mail: Matthew.Fogelson@usdoj.gov

14 ELIZABETH F. KROOP  
15 Environmental Enforcement Section  
16 Environment & Natural Resources Division  
17 United States Department of Justice  
18 P.O. Box 7611  
19 Ben Franklin Station  
20 Washington, DC 20044  
21 Telephone: (202) 514-5244  
22 Facsimile: (202) 514-2583  
23 E-mail: Elizabeth.Kroop@usdoj.gov

24 Additional Counsel Listed on Next Page

IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

25 UNITED STATES OF AMERICA,  
26 Plaintiff,  
27 v.  
28 CARRIER CORPORATION,  
Defendant.

Case No. CV-05-6022 ABC (FMOx)

AMENDED CONSENT DECREE

29

1 III. PARTIES BOUND

2 2. This Consent Decree applies to and is binding upon the United States  
3 and upon Settling Defendants and their successors and assigns. Any change in  
4 ownership or corporate status of a Settling Defendant including, but not limited to,  
5 any transfer of assets or real or personal property, shall in no way alter such  
6 Settling Defendant's responsibilities under this Consent Decree.

7 3. Settling Defendants shall provide a copy of this Consent Decree to  
8 each contractor hired to perform the Work (as defined below) required by this  
9 Consent Decree and to each person representing any Settling Defendant with  
10 respect to the Site or the Work and shall condition all contracts entered into  
11 hereunder upon performance of the Work in conformity with the terms of this  
12 Consent Decree. Settling Defendants or their contractors shall provide written  
13 notice of the Consent Decree to all subcontractors hired to perform any portion of  
14 the Work required by this Consent Decree. Settling Defendants shall nonetheless  
15 be responsible for ensuring that their contractors and subcontractors perform the  
16 Work contemplated herein in accordance with this Consent Decree. With regard to  
17 the activities undertaken pursuant to this Consent Decree, each contractor and  
18 subcontractor shall be deemed to be in a contractual relationship with the Settling  
19 Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C.  
20 § 9607(b)(3).

21 IV. DEFINITIONS

22 4. Unless otherwise expressly provided herein, terms used in this  
23 Consent Decree that are defined in CERCLA or in regulations promulgated under  
24 CERCLA shall have the meaning assigned to them in CERCLA or in such  
25 regulations. Whenever terms listed below are used in this Consent Decree or in the  
26 appendices attached hereto and incorporated hereunder, the following definitions  
27 shall apply:

28 "Basin-wide Response Costs" shall mean costs, including but not limited to

1 direct and indirect costs, including accrued Interest, that the United States has  
2 incurred or in the future incurs for basin-wide (non-operable unit) response actions  
3 in connection with the San Gabriel Valley Superfund Sites, Areas 1 - 4.

4 "CERCLA" shall mean the Comprehensive Environmental Response,  
5 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

6 "Consent Decree" shall mean this Decree and all appendices attached hereto (listed  
7 in Section XXX). In the event of conflict between this Decree and any appendix,  
8 this Decree shall control.

9 "Day" shall mean a calendar day unless expressly stated to be a working  
10 day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal  
11 holiday. In computing any period of time under this Consent Decree, where the  
12 last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run  
13 until the close of business of the next working day.

14 "DOJ" shall mean the United States Department of Justice and any of its  
15 successor departments, agencies, or instrumentalities.

16 "DTSC" shall mean the California Department of Toxic Substances Control  
17 and any successor departments or agencies.

18 "Effective Date" shall be the effective date of this Consent Decree as  
19 provided in Paragraph 117.

20 "Eligible SEP Costs" shall include the costs of implementing the  
21 Supplemental Environmental Project (SEP) required pursuant to Section XVIII,  
22 but do not include Settling Defendants' overhead, administrative expenses or legal  
23 fees. Contractor oversight costs not exceeding 5% of \$468,750 may be included as  
24 Eligible SEP Costs, so long as adequate documentation is provided.

25 "EPA" shall mean the United States Environmental Protection Agency and  
26 any of its successor departments or agencies.

27 "Explanation of Significant Differences" or "ESD" shall mean the  
28 Explanation of Significant differences relating to the Site issued by EPA on June

1 14, 2005. The ESD is attached as Appendix B to this Consent Decree.

2 "Future Response Costs" shall mean all costs that are incurred by the United  
3 States or any third party for response actions with respect to the Site after the  
4 Effective Date, but prior to the later of (i) the date 8 years from the Operational and  
5 Functional Date, or (ii) the date of issuance of a final Record of Decision for the  
6 Site. Future Response Costs include, but are not limited to, Basin-wide Response  
7 Costs allocated to the Site, direct and indirect costs and accrued interest that the  
8 United States incurs in reviewing or developing plans, reports, and other items  
9 pursuant to this Consent Decree, verifying the Work, or otherwise implementing,  
10 overseeing, or enforcing this Consent Decree, including but not limited to payroll  
11 costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to  
12 Sections VII (Remedy Review), IX (Access and Institutional Controls; including  
13 but not limited to the cost of attorney time and any monies paid to secure access or  
14 to secure or implement institutional controls including but not limited to the  
15 amount of just compensation), XV (Emergency Response), and Paragraph 99 of  
16 Section XXII (Work Takeover).

17 "Interest," shall mean interest at the rate specified for interest on investments  
18 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,  
19 compounded annually on October 1 of each year, in accordance with 42 U.S.C.  
20 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the  
21 interest accrues. The rate of interest is subject to change on October 1 of each  
22 year.

23 "Interim ROD" shall mean the Interim Record of Decision relating to the  
24 Puente Valley Operable Unit of the San Gabriel Valley Superfund Sites signed on  
25 September, 30 1998 by the Regional Administrator, EPA Region 9, or his/her  
26 delegate, and all attachments thereto. The Interim ROD is attached as Appendix A  
27 to this Consent Decree.

28 "Mid-Valley Monitoring" shall mean the installation and monitoring of



1 wells in the intermediate and deep groundwater zones in the mid-valley area of the  
2 Site to monitor vertical and horizontal contaminant migration in such groundwater  
3 zones, as set forth in the SOW. For purposes of this Consent Decree, the mid-  
4 valley shall extend from Azusa Avenue to Puente Creek.

5 "National Contingency Plan" or "NCP" shall mean the National Oil and  
6 Hazardous Substances Pollution Contingency Plan promulgated pursuant to  
7 Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300,  
8 and any amendments thereto.

9 "Operational and Functional" shall mean that the Remedial Action, or a  
10 phase thereof, has been constructed and that it is performing in accordance with the  
11 applicable SOW and the applicable final Remedial Design/ Remedial Action Work  
12 Plans and other plans approved by EPA.

13 "Operational and Functional Date" shall mean the date that all phases of the  
14 Remedial Action are Operational and Functional pursuant to Paragraph 50.

15 "Paragraph" shall mean a portion of this Consent Decree identified by an  
16 Arabic numeral or an upper case letter.

17 "Parties" shall mean the United States and the Settling Defendants.

18 "Past Response Costs" shall mean all costs, including but not limited to  
19 Basin-wide Response Costs allocated to the Site, direct and indirect costs,  
20 including Interest, that the United States or any third party has paid or incurred at  
21 or in connection with the Site, through and including the Effective Date.

22 "Performance Criteria" shall mean the prevention of groundwater in the  
23 shallow zone north of Puente Creek at the mouth of Puente Valley with  
24 contamination greater than or equal to ten-times the levels listed in Table 2 of the  
25 ESD from:

- 26 (1) migrating beyond its lateral extent as measured at the time the  
27 shallow zone Remedial Action containment system is Operational and  
28 Functional; and

SCANNED

1 (2) migrating vertically into the intermediate zone;  
2 for a period of 8 years from the Operational and Functional Date.

3 "Plaintiff" shall mean the United States.

4 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.  
5 §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

6 "Remedial Action" shall mean those activities to be undertaken by Settling  
7 Defendants to implement the shallow zone remedy north of Puente Creek and Mid-  
8 Valley Monitoring, in accordance with the Interim ROD as modified by the ESD,  
9 the applicable SOW, and the applicable Remedial Design/ Remedial Action Work  
10 Plans and other plans approved by EPA.

11 "Remedial Action Work Plan" shall mean the document developed pursuant  
12 to Paragraph 11 of this Consent Decree and approved by EPA, and any  
13 amendments thereto.

14 "Remedial Design" shall mean those activities to be undertaken by Settling  
15 Defendants to develop the final plans and specifications for the Remedial Action  
16 pursuant to the Remedial Design Work Plan.

17 "Remedial Design Work Plan" shall mean the document developed pursuant  
18 to Paragraph 10 of this Consent Decree and approved by EPA, and any  
19 amendments thereto.

20 "Section" shall mean a portion of this Consent Decree identified by a Roman  
21 numeral.

22 "SEP" shall mean the Woodland Duck Farm Supplemental Environmental  
23 Project as described in Paragraph 62, or any alternative Supplemental  
24 Environmental Project approved by EPA pursuant to Paragraph 63.

25 "SEP Implementation Plan" shall mean the document describing the SEP  
26 and setting forth those activities required to implement the SEP.

27 "Settling Defendants" shall mean Carrier Corporation and United  
28 Technologies Corporation.

1 "Site" shall mean the area of groundwater contamination in Los Angeles  
2 County, California, located in the geographic area designated on the National  
3 Priorities List as the San Gabriel Valley Superfund Site, Area 4 [see 49 Fed. Reg.  
4 19480 (1984)], and identified as the Puente Valley Operable Unit.

5 "State" shall mean the California Department of Toxic Substances Control  
6 ("DTSC").

7 "Statement of Work" or "SOW" shall mean the statement of work for  
8 implementation of the Remedial Design and Remedial Action at the Site, as set  
9 forth in Appendix D to this Consent Decree and any modifications made in  
10 accordance with this Consent Decree.

11 "Supervising Contractor" shall mean the principal contractor retained by the  
12 Settling Defendants to supervise and direct the implementation of the Work under  
13 this Consent Decree.

14 "Unilateral Administrative Order Docket No. 2001-20" or "UAO Docket  
15 No. 2001-20" shall mean the order issued by EPA to Carrier Corporation on or  
16 about September 13, 2001.

17 "United States" shall mean the United States of America.

18 "Waste Material" shall mean (1) any "hazardous substance" under Section  
19 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant  
20 under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste"  
21 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous  
22 material" under the California Hazardous Waste Control Act Section 25100 et seq.

23 "Work" shall mean all activities Settling Defendants are required to perform  
24 under this Consent Decree, except those required by Section XXVI (Retention of  
25 Records) and Section XVIII (Supplemental Environmental Projects).

## 26 V. GENERAL PROVISIONS

27 5. Objectives of the Parties. The objectives of the Parties in entering into  
28 this Consent Decree are to protect public health or welfare or the environment at

1 Decree.

2 XIV. CERTIFICATION OF COMPLETION

3 50. "Operational and Functional"

4 a. Within 30 Days after Settling Defendants conclude that the  
5 Remedial Action is Operational and Functional, Settling Defendants shall schedule  
6 and conduct a pre-certification inspection to be attended by Settling Defendants  
7 and EPA. If, after the pre-certification inspection, the Settling Defendants still  
8 believe that the Remedial Action is Operational and Functional, they shall submit a  
9 written report requesting certification to EPA for approval, with a copy to the  
10 State, pursuant to Section XI (EPA Approval of Plans and Other Submissions)  
11 within 30 Days of the inspection. In the report, a registered professional engineer  
12 and the Settling Defendants' Project Coordinator shall state that the Remedial  
13 Action is Operational and Functional. The written report shall include as-built  
14 drawings signed and stamped by a professional engineer. The report shall contain  
15 the following statement, signed by a responsible corporate official of a Settling  
16 Defendant or the Settling Defendants' Project Coordinator:

17 To the best of my knowledge, after thorough investigation, I certify  
18 that the information contained in or accompanying this submission is  
19 true, accurate and complete. I am aware that there are significant  
penalties for submitting false information, including the possibility of  
fine and imprisonment for knowing violations.

20 If, after completion of the pre-certification inspection and receipt and review of the  
21 written report, EPA, after reasonable opportunity to review and comment by  
22 DTSC, determines that the Remedial Action is not Operational and Functional,  
23 EPA will notify Settling Defendants in writing of the activities that must be  
24 undertaken by Settling Defendants pursuant to this Consent Decree in order for the  
25 Remedial Action to be Operational and Functional. EPA will set forth in the notice  
26 a schedule for performance of such activities consistent with the Consent Decree  
27 and the SOW or require the Settling Defendants to submit a schedule to EPA for  
28 approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).

1 Settling Defendants shall perform all activities described in the notice in  
2 accordance with the specifications and schedules established pursuant to this  
3 Paragraph, subject to their right to invoke the dispute resolution procedures set  
4 forth in Section XX (Dispute Resolution).

5 b. If EPA concludes, based on the initial or any subsequent report  
6 requesting certification, and after a reasonable opportunity for review and  
7 comment by DTSC, that the Remedial Action is Operational and Functional, EPA  
8 will so certify in writing to Settling Defendants.

9 c. If EPA fails to certify that the Remedial Action is Operational  
10 and Functional within 90 Days after a request, EPA shall be deemed to have denied  
11 the request, unless Settling Defendants agree to an extension of time. Settling  
12 Defendants may, at any time thereafter, invoke Dispute Resolution pursuant to  
13 Section XX (Dispute Resolution).

14 d. Nothing herein shall preclude Settling Defendants from  
15 requesting, and EPA from granting, pursuant to the same procedures set forth in  
16 Subparagraphs a-c of this Paragraph, certification that a phase of the Remedial  
17 Action is Operational and Functional; provided, however, that any such  
18 certification shall be conditioned on such phase remaining Operational and  
19 Functional at the time Settling Defendants request certification for the final phase  
20 of the Remedial Action. In the event Settling Defendants request certification that  
21 a phase of the Remedial Action is Operational and Functional, and such request is  
22 granted, the resulting certification shall not affect the Operational and Functional  
23 Date.

24 e. Upon approval of the certification report by EPA or pursuant to  
25 a ruling by the Court, the Operational and Functional Date shall be the date when  
26 the last report requesting certification of the final phase of the Remedial Action  
27 was submitted.

28 f. The Operational and Functional Date established pursuant to

1 this Paragraph shall not be affected if existing contamination greater than or equal  
2 to ten-times the levels listed in Table 2 of the SOW has migrated vertically into the  
3 intermediate zone and this existing contamination prevents Settling Defendants  
4 from meeting the Performance Criteria, provided the Settling Defendants are  
5 taking the response actions determined by EPA to be necessary to reverse the trend  
6 pursuant to the SOW.

7 g. Once EPA has determined that the Remedial Action is  
8 Operational and Functional pursuant to this Paragraph, the Operational and  
9 Functional Date shall not be affected in the event EPA subsequently determines,  
10 pursuant to Paragraph 13, that modification to the Work specified in the SOW or in  
11 work plans developed pursuant to the SOW is necessary to achieve and maintain  
12 the Performance Criteria, to meet discharge ARARs, or to implement Mid-Valley  
13 Monitoring.

14 51. Certification of Completion.

15 a. No later than 90 Days before, and no sooner than 120 Days  
16 prior to, the eight-year anniversary of the Operational and Functional Date, and  
17 upon Settling Defendants concluding that the Remedial Action is still Operational  
18 and Functional, Settling Defendants shall schedule a pre-certification inspection to  
19 be attended by Settling Defendants and EPA. The Settling Defendants shall submit  
20 a Facility Status Package to EPA which shall include, but not be limited to, all  
21 maintenance reports, performance reports, sampling results, and all other  
22 deliverables updated as appropriate to reflect the performance and condition of the  
23 containment and Mid-Valley Monitoring systems including all wells, pipelines,  
24 and treatment facilities. If, after the pre-certification inspection, the Settling  
25 Defendants still believe that the Remedial Action is Operational and Functional,  
26 Settling Defendants shall submit a written report by a registered professional  
27 engineer, in accordance with the SOW, stating that the Remedial Action is  
28 Operational and Functional. The report shall contain the following statement,